

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKY MARTINEZ,
Plaintiff,
v.
WILLIAM SULLIVAN,
Defendant.

Case No. [17-cv-04436-JSC](#)

ORDER TO SHOW CAUSE

Re: Dkt. No. 1

Petitioner, a prisoner of the State of California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254. (Dkt. No. 1-1.) Plaintiff also moves to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915. (Dkt. No. 1-2, 3.) Due to sufficient funds in petitioner’s trust account, his application to proceed in forma pauperis is DENIED. (Dkt. No. 3 at 5-6.) Petitioner must pay \$5 within 28 days of this Order or the case may be dismissed.

Plaintiff’s petition sets forth three claims challenging the constitutionality of petitioner’s conviction in state court: violation of the right to a fair trial under the Sixth Amendment, violation of effective assistance of counsel under the Sixth Amendment, and due process violations under the Fourteenth Amendment.

These claims, when liberally construed, are cognizable and potentially meritorious. Good cause appearing, Respondent is hereby ordered to show cause why the petition should not be granted.

In order to expedite the resolution of this case, it is further ordered as follows:

1. The Clerk shall serve respondent and the respondent’s attorney, the Attorney General of the State of California, with a copy of this order and the petition with all attachments.

2. Consistent with Habeas Local Rule 2254-6, Respondent shall file with the court and

1 serve on petitioner, within 60 days of service of the petition and this order, an answer conforming
2 in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
3 habeas corpus should not be granted based on the claims found cognizable herein. Respondent
4 shall file with the answer and serve on petitioner a copy of all portions of the state trial record that
5 have been transcribed previously and that are relevant to a determination of the issues presented
6 by the petition.

7 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
8 court and serving it on Respondent within 30 days of the date the answer is filed.

9 3. Respondent may file, within 60 days, a motion to dismiss on procedural grounds in lieu
10 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
11 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and
12 serve on respondent an opposition or statement of non-opposition within 30 days of the date the
13 motion is filed, and respondent shall file with the court and serve on petitioner a reply within 14
14 days of the date any opposition is filed.

15 4. The Clerk shall send a notice to petitioner and respondent regarding consenting to the
16 jurisdiction of a magistrate judge.

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19 **IT IS SO ORDERED.**

20 Dated: August 21, 2017

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23 JACQUELINE SCOTT CORLEY
24 United States Magistrate Judge
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